IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.56 OF 2006
IN
EXECUTION APPLICATION NO.422 OF 2005
IN
AHMEDABAD CITY CIVIL COURT SUIT NO.4711 OF 1998

Ferromatik Milacron India Ltd.,)..Plaintiffs
V/s.
M/s.Consolidated Plastics & Ors.)..Defendants
And
Mrs.Asha K.Haji)..Respondent

Mr.M.A.Shah i/by A.G.Shah for plaintiffs.

Mr.Vicky Singh i/by N.R.Gandhi for respondent.

Mr.J.M.Dwij i/by Mahimtura & Co. for defendant no.2.

Coram : R.S.Mohite,J

Date : 4th September,2006

PC

1. This is a Chamber summons taken out by the respondent for release of flat no.1/A on the 1st floor and the garage on the ground floor situated in the building known as "Chandan" at 62/B, Peddar Road, Mumbai-400 026, from the attachment made pursuant to the warrant of attachment dated 2.12.2005. Attachment which was prayed for and which was granted was in respect of un-divided shares of the judgment-debtor who is the real brother of the present respondent. In the affidavit in support of the Chamber summons it is contended that the building "Chandan" was of the ownership of the respondent’s late father and several

other persons who were the co-acquirers. The construction was effected by the respondent's father and the co-acquirers. The respondent's father was died on 21.12.1965. He was survived by his wife, son (judgment debtor) and the respondent who are the only 3 legal heirs.

2. It was further mentioned that on the death of the respondent's father, the respondent become legal heir and beneficiary of her late father and thus she became entitled to the attached property. There is a reference in the affidavit in support to a share certificate said to have been issued on 2.1.1999 in which the present respondent is shown to be a shareholder in respect of 5 shares of the co-operative society.

3. A reference is also made to other documents which are in the nature of electricity bills and the letter dated 2.2.2004 issued by the Chairman of the co-operative society as also to maintenance bills issued by the society.

4. It is argued on behalf of the respondent that the exclusive name of the respondent came to be recorded in the share certificate on the basis of an oral family arrangement. In the affidavit in support of the chamber summons there is no reference whatsoever to any oral family arrangement said to have been entered into

after the death of the father of the respondent. Reference to the said family arrangement finds place for the first time in the affidavit in rejoinder and even there the averments are vague and there is no date or even any approximate period mentioned as to when such family arrangement was entered into. In paragraph-4 of the rejoinder it is mentioned that the respondent was the sole owner of flat no.1/A and the garage on account of oral family arrangement, a reference to which is found in an agreement dated 22.8.2002 which was the registered document arrived at between the children and the wife of respondent's deceased father.

5. In this connection, it may be mentioned that the decree under execution is dated 24.11.2000. The mentioning of a family arrangement in a family document dated 22.8.2002 may not be of much value. It is also seen that both in the affidavit in support of the chamber summons as well as in the rejoinder, there is no document to show that maintenance bills or electricity bills have been issued in the name of the present respondent who claims to be in possession since 1970.

6. As far as the share certificate issued by the society is concerned, it is not disputed that the members of the society consist of family members. It was fairly admitted that the Chairman and Secretary who

have signed the document are close family members. Reliance was placed on Section 38. Section 38 states that a register maintained by the co-operative society would be prima facie evidence of the contents therein. That register is not produced. Taking an overall view, I am not inclined to grant this Chamber summons. Chamber summons stands rejected. It will be open for the respondent to secure a declaration to an appropriate forum or Court as regards title and such liberty is granted. Advocate for the respondent states that there is ad-interim relief granted on 23.1.2006. The adinterim order to continue for a period of 4 weeks.

(R.S.Mohite,J)